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Kennedy, Elijah Robinson

Origin of the standard fire insurance policy

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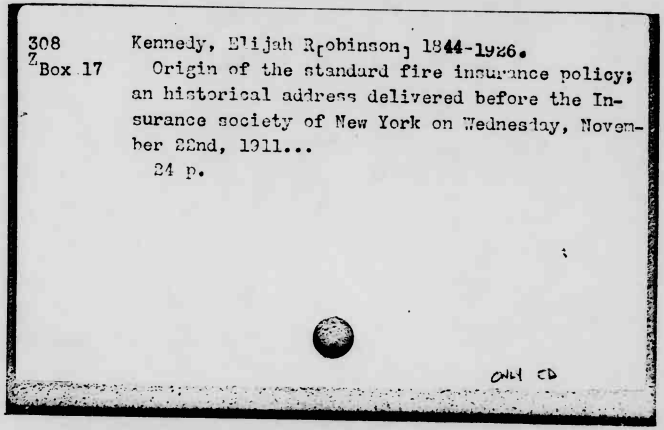
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Origin of the Standard Fire Insurance Policy

AN HISTORICAL ADDRESS

Delivered Before

The Insurance Society of New York

ON

Wednesday, November 22nd, 1911

BY

Mr. Elijah R. Kennedy

OF

Weed & Kennedy

22. Nov. 1915. MS

"Origin of the Standard Fire Insurance Policy."

With such a distinguished company, Mr. President, in the presence of the Superintendent of Insurance, and the President of the New York Board, and so many others, I almost feel like beginning as they did at a Fourth of July banquet in London which I attended, where our Ambassador, Mr. Choate, was present, and Cardinal Vaughan, in his brilliant robes, the Earl of Dartmouth, a great-grandson of a member of Lord North's Cabinet, and several other members of the nobility, so that the speakers, after addressing the President of the American Society, looked at Mr. Choate and said, "Your Excellency," and at the Cardinal and said, "Your Eminence," and to the rest, "My Lords and Gentlemen."

The standard policy was needed; therefore it came. It was the result of an evolution out of business conditions that were intolerable. When it appeared it instantly effected a revolution; a revolution that injured no man or no interest, but benefited every one concerned. Its relation to the general business welfare of this State, and of most other States, seems to me to justify the assertion that the statute from which it originated is not second in importance to any enactment of the New York Legislature touching fire insurance.

I am not cribbing from Mr. Eaton, for I have the word here in my notes, when I re-affirm what our distinguished friend has said, that the substitution of the uniform Standard Policy of New York State for the many conflicting policies,

Marks an Epoch,

and I dare say as important an epoch in the fire insurance business of the country as any event or article since fire insurance began this side of the Atlantic. It wrought not only a great reform in the affairs of companies, but also a beneficent re-

form, quite as much, in the affairs of property-owners concerned with insurance. I suspect that most of those into whose faces I look, and who are the active men issuing policies today, cannot recall the condition of affairs in our business previous to twenty-five years ago, when the Standard Policy was made. You have never had to adjust a loss under a lot of conflicting policies. Previous to 1887 each company prepared its own policy. There were no two exactly alike. The conditions, many of them, were in print so fine that, as Mr. Richards says in his book, "They could only be read by the aid of a magnifying glass." The consequence was that holders of policies were generally unaware of many of the important conditions which affected their business so materially, and thus, after losses, there were many disagreeable surprises, much indignation, and many litigations.

A Characteristic Incident

occurred at Batavia, in this State. A building burned; the companies adjusted the loss promptly and fairly, as the owner of the building said to me. The proofs were made out, and the companies promptly paid:—all but one, which I may parenthetically remark, is now deservedly dead. That company called the owner's attention to the fact that among the fine print conditions, where the lines were not even numbered, so it was hard to refer to them, there was a provision under which the company did not cover on plate glass above a certain size, unless that was specially indorsed on the policy; and as in this case it had not been specifically endorsed, and as they had learned there was glass in the building above the size permitted, they found that they were wrongfully allotted a charge of fifteen dollars on plate glass, which they deducted from the payment. Now, the other companies, I will say, re-opened their adjustments, although they had paid their losses, and made up that fifteen dollars among them. This incident explains line 43 of the policy. "This company shall not be liable for any greater proportion of the value of plate glass, frescoes, and decorations than that which this policy shall bear to the whole insurance." That was necessary at the time, because it was the purpose of many companies to use this policy in other States, where there would be companies that would not use it, and so they proposed that such companies, with such clauses as saved that fifteen dollars, should not saddle plate glass and fresco amounts all on to companies using the new policy. There are

which require a similar explanation. In lines 96 to 100, for instance, it is provided that a company issuing this policy shall not be liable for more than its proportion of the entire insurance on property removed to a place of safety when endangered by fire.

Companies were in the habit of altering policy conditions to avoid the repetition of unfavorable verdicts in court and unpleasant incidents in adjustments. It was long a question, and I think it still is, whether, under insurance on merchandise in the hands of a commission merchant, that merchant's commissions are covered. You would have thought that in the great Boston fire, where most of the merchandise burned was in the hands of commission merchants, so important a question would have been settled on so great an occasion. Lawyers here gave advice to companies both ways;—that they were liable for commissions and that they were not. The question was not tried out, but was settled, as it has been in all cases I have known in New York since, by compromise. But there was one large company here which subsequently undertook to settle that matter, for itself at least; for one day I discovered among those very fine print conditions—I do not know why I happened to be looking at it—a few words that had been run in recently, specifically declaring that that company would not pay a commission merchant any sum on account of commissions, in case of fire; that is, under insurance covering merchandise. Now, it was a good deal of bother to correct that condition. It took us some time to get together eighty-five policies covering merchandise in the warehouses and storage stores of commission merchants, but when they were all handed in for cancellation one day, we were requested to give the reason, and the next day we were informed that those fine print words had been erased and a new edition of fine print policies would be issued.

The New York Board of Fire Underwriters recognized the unsoundness of this state of affairs, and long before the State government acted, before any State provided a standard policy, the Board, through a competent committee and with able legal counsel, prepared an excellent form of policy, and many companies represented in the Board began to use it, more especially the New York and British companies domiciled here; but it was not used by all the companies represented here, and not used by companies in other States; and gradually, too, under apparent necessities, amendments crept in and uniformity was destroyed.

I take a little pride in having drawn a bill to require a uniform policy before that which was passed in 1886, which bill was introduced in the Senate by the Honorable Charles H. Russell, of Brooklyn. We had some talk about it, but sentiment had not at that time been sufficiently aroused to warrant the Senator in pressing it, and so, while it was reported to the Senate, no effort was made to order it to a third reading.

The First State to Undertake to Reform

the situation I have briefly referred to was Massachusetts. There the Legislature made a policy which was embodied in a statute, and with customary jealousy of insurance men the members of the Legislature made that policy without much conference, and much against the remonstrances of many. The natural result of that was that within a year the Massachusetts courts had declared one of the most important conditions in that policy unconstitutional. I think it is still in the policy. The policy was not deemed good enough for adoption by companies elsewhere, except in a very few States where its use was enforced by law. The bill which resulted in the standard policy in New York State was introduced in 1886 by Senator McMillan of Buffalo. It was a

Result of Difficulties

arising out of the adjustment of a loss on the building of the Young Men's Christian Association in that city. When these difficulties had become acute the matter was placed in the hands of Senator McMillan as legal counsel. He was so annoyed and exasperated and baffled by the non-uniformity of the printed conditions in the many policies that he determined then to procure legislation for uniformity. The Board of Underwriters here would have favored any measure that would have provided a uniform policy if the members could have been sure the policy would be a good one. But, warned by the example of Massachusetts, and disturbed by some provisions in Mr. McMillan's bill, the Board instructed its Committee on Laws and Legislation to remonstrate against the passage of the measure. I had the honor to be at the time Chairman of the Committee, and as I was very much in favor of an enforced uniformity of policy conditions I asked to be permitted to resign from the Committee; but the arrangement suggested was that I should not resign, but be excused from service in that matter. So the members of the Committee, other than myself—some of them at least—visited Albany, and attended a public hearing of the Committee on Insurance of the State Senate. At that time the Honorable J. Sloat Fassett was chairman of the committee, the Honorable Commodore Perry Vedder, lately deceased, vice-chairman, and my good friend and neighbor over in Brooklyn, the Honorable Stephen M. Griswold was a member, with whom I had many interesting and profitable conferences.

Right here we encountered an instance of getting your bread back after you had cast it upon the waters, and in a way not contemplated, I suspect, in the Scriptures in this reference. The owner of the building at Batavia which I mentioned turned up as Senator Walker, a member of the Committee on Insurance in the Senate. Not much use to argue with him against a standard and uniform policy. But I am bound to say that he was in all matters temperate and fair in his treatment of the question, except that he would not have the subject of uniformity debated at all—that must be. The argument against the measure was made by Mr. Peter Notman, President of the Niagara Insurance Company, and I suppose at that time as excellent a speaker on business topics to business men as any man in the fire insurance business in the world; a man of every quality that was admirable, physical and mental.

I visited Albany as a spectator, and after the hearing, in fifteen minutes, learned that the Committee by a unanimous vote had decided to report the bill favorably. That created

A Crisis for the Underwriters

and a special meeting of the Board of Underwriters here was called. It referred the subject to its Committee on Laws and Legislation with full discretion.

I visited Albany at once, and I think that on that trip Mr. Hull, who was Vice-Chairman of the Committee, accompanied me. At various times all the members of the Committee went to Albany, not only to public hearings, but for discussions and conversations with influential members. This was the situation that confronted us— an apparent certainty that the bill would pass. In that case the policy was to be made by the Superintendent of Insurance, who was no more qualified for composing a policy form under which every fire insurance contract in this State should be made than an Egyptian mummy of the Second Dynasty. I intend no disparagement of Mr. Maxwell, as man or politician or Superintendent. We found him a man of good sense and

good disposition, and as well aware of his incapacity for making a policy as we were. But there was the bill, and the unanimous report in its favor, and a very determined and strong Senator bound to have the credit of passing it.

Now, I do not positively recollect—several members of the committee that made the policy are here tonight, and if any one of them has a positive recollection I shall be very glad to have my memory refreshed, for I have been unable to recollect—who it was that first suggested that the New York Board of Fire Underwriters should be substituted for the Superintendent of Insurance to make the policy. I feel quite positive the suggestion originated in the Committee, and I suspect that the Chairman was the only man who had the temerity to propose the alteration.

Some of the Committee were dubious concerning the success of the proposition. Their feeling was, "The State will never delegate such power to a private association." Then Mr. Butler helped us with a precedent. He reminded us that the State had delegated to the New York Chamber of Commerce and the Board of Marine Underwriters of New York the power to elect the commissioners who license all Sandy Hook pilots. Believing in the worth of our proposition, and fortified with the precedent supplied us by Mr. Butler, we returned to Albany once more. I went up to Senator Fassett's house by the park, one evening, and after a long and full discussion Senator Fassett was convinced that some alteration was necessary, and he said to me: "Kennedy, if you will promise me that you will see that a policy fair to the public shall be made, I will favor your change." So Senator Fassett went down to the Delevan House with me, shortly after dinner, and talked with Senator McMillan. As the bill stood at that time it was so rigid that you could not have added descriptions of property on a policy. The Senator's determination to enforce uniformity was so great that he had overlooked the diversity that must be permitted in certain parts of the policy on account of the diversity of risks and owners. Well, we thrashed it all out until shortly after 11 o'clock, when Senator Fassett said, in terms of personal familiarity not intended for publication, "Well, now, Senator McMillan, I am going home. If Kennedy wants to stay here and fight this matter out with you any longer, he may. I think Kennedy is right and you are wrong, and if you don't become reasonable I will introduce a substitute for your bill, and have it reported, and take all the credit for passing a unform policy bill myself." So after two o'clock in the morning

Senator McMillan Became Tractable.

I ought to say that the Senator was not hostile. He was a conscientious man. He believed it his duty to force upon the companies a requirement that they use only one policy; he feared our amendments might prevent that. After satisfying him on that point we found it comparatively easy to obtain his consent to the amendment allowing the Board to make the policy. Mr. McMillan has gone the way of all the living. The historical fact remains that it was he who originated and carried through the bill for the Standard Policy.

The bill provided that the Superintendent of Insurance should make a policy, and the amendment read "Unless on or before the fifteenth day of October the New York Board of Fire Underwriters shall make and file with the Secretary of State," a policy.

There were other amendments to permit the flexibility necessary in making individual contracts. Even in those the bill was more rigid than we ourselves felt was necessary. However, it soon passed and became Chapter 488 of the Laws of 1886.

The Board then referred the making of the policy to the same Committee on Laws and Legislation. The members of the Committee who are still living are Mr. J. Montgomery Hare—and I can say that no man on the entire committee did more work, or better work, than Mr. Hare; Mr. James A. Alexander, who at the youthful age of eighty-five continues the active pursuit of our business, and who honors us with his presence here tonight; Mr. Charles A. Hull, and myself, who are still in the business, and Mr. William M. St. John, who has retired. The other members of the committee, Mr. Peter Notman, Mr. Charles Sewall, and Mr. Henry H. Hall, are dead. We chose as additional members for this work, Mr. F. C. Moore, at that time President of the Continental Insurance Company, and who is happily living, and Mr. Daniel A. Heald, at that time President of the Home Insurance Company, who has passed away. I assure you the members of that committee appreciated

The Great Responsibility

that had been placed upon them. From the first we hoped to make a policy that should be so good that it would satisfy not only this State but all the States. We therefore invited cooperation from underwriters everywhere. The Hartford companies chose Mr. D. W. C. Skilton, then and happily now President of the Phœnix Insurance Company, who is here tonight, to

represent them. The Philadelphia underwriters chose the late Mr. Thomas H. Montgomery, at that time President of the American Fire Insurance Company of that city. We would meet and discuss the policy subjects that came up; Mr. Skilton would go back to Hartford and report to his fellow underwriters in that great center of underwriting brains and capital, and Mr. Montgomery would go back to Philadelphia and confer with his fellow underwriters in that other city of underwriting brains and capital, and then they would return with the result of their conferences and present their views and wisdom.

In those days there was a company at Watertown, N. Y., which was *sui generis*, and in order that its interests should be fairly considered we invited its secretary, Dr. H. M. Stevens, to become a member of our Committee. He accepted and attended many of our meetings, bringing with him the Honorable A. H. Sawyer, an ex-judge of the Supreme Court; and I tell you they gave us many stiff fights. Of the thirteen members of the committee seven are still living, and five are here to night. I should add that Judge Sawyer, in matters which were not peculiar to his own company, was of very great service to us in the discussions, especially of legal questions. The Hartford underwriters sent us Franklin Chamberlain, a gentleman eminent especially in insurance law; whose text books in those days were much quoted in court, and much consulted by underwriters, and who assisted us very much in the strictly legal questions. The New York members chose as Counsel to the Committee the late William Allen Butler. Mr. Butler, those of us who remember him at that time will easily agree, was recognized as the leading fire insurance lawyer of the United States, besides being very eminent indeed in several other most important branches of practice. His judicial temperament, his perfect familiarity with usages in our business, his broadness of view and freedom from the trammels of petty technicalities, and his serenity amid exciting and occasionally acrimonious discussions, were of inestimable value during the entire period of our labors, and his clarity of style is evident in every line of the policy. He, alas! is also gone, but his son and partner is with us tonight.

The Meetings of the Committee

were held sometimes up in Mr. Butler's office in the old Trinity Building; oftener in the offices of the Commercial Union Assurance Company, at the familiar corner. One day the weather was so oppressively hot that the chairman proposed we go down and

hold our session at the Oriental Hotel, at Coney Island. And so we went. Well, gentlemen, there was a land breeze that day, and the mosquitoes and green flies, and other flies that stirred up the members of that committee at that time, kept us in the offices of the Commercial Union at most of our other sessions. We never went back to Coney Island.

From what we regarded as three of the best policies current at that time we took the conditions on the various subjects in the policies, printed them at the upper corner of large sheets of paper, and sent them to underwriters all over the United States, asking them to improve those conditions, to substitute other conditions, and to write their marks and discussions on the page, and, if requisite, on other pages. When those scores upon scores of replies came in—some of them from as far off as California—it fell to the Chairman, who acted as Secretary also, to assort and classify and condense and compare them, and, when they were pertinent, to present them to the committee. I suppose that there never was one one-hundreth part of the care and work on any other fire insurance policy in the world—at least, to secure the opinions and judgment of underwriters throughout the nation—that was exhibited in

The Preparation of this Policy.

At the outset several members of the committee, you will remember, [turning to the other members who are present,] favored dropping the word "insure" altogether, and using the word "indemnify." Many people had come to think that to insure a man a certain amount, or not exceeding a certain amount, meant that the company, in case of fire, was to pay that amount; and so it was urged that "will indemnify for loss by fire" should be substituted. The majority of the committee, however, adhered to the old term.

The next matter was to endeavor to confine the risk to the place described in the policy. Out in the city where I was reared a lady whose furs were supposed to be insured in her private dwelling had sent them down for repair to an extremely hazardous risk in the business part of the city, and when the factory burned she found a lawyer able to convince the jurors and the court that the insurance followed the furs; that it was a natural and necessary use of the furs that they should be sent out for repairs occasionally. I suppose that lady had the idea that her furs were also insured when she wore them to the theatre. Such a construction would convert every household furniture policy

into a floater at private dwelling rates. Well, we endeavored at least to locate the companies' risk by using up here [indicating], the words *"While* located therein, and not elsewhere," and since then, I think, the decisions have been favorable to the view that the risk is confined to the place which the company takes a premium for. There were those who favored

A Brief Policy.

Doubtless all that is essential could be compressed into half the words in this policy and the policy would then be understood by officers of companies and adjusters, but not by the general public. The Committee felt that the policyholders should have the conditions before them in language so plain that it could be understood without the necessity for consulting a lawyer or undertaking to learn what the latest adjudications were. And when the policy appeared many thought it was too long, judging from its size and appearance. That is partly due to the fact that the type was much larger and more open than most of the type in the policy conditions that people were accustomed to. The fact is, this policy is quite one thousand words shorter than the policies that were formerly used by many of the great companies doing business in the United States.

Mr. Babb: Do you remember, Mr. Kennedy, how many words there are?

Mr. Kennedy: No, I don't. I intended to count them today, and half a dozen other days, but I have not had the time. I remember, though, that one of the city companies had 880 words more in its policy than there are in this, and one of the New York companies' policies contained just a little over a thousand more. So this policy was entitled to be called at that time a brief policy.* Now, we realized as a Committee that we and the Board to which we must report were substituted for the Legislature of this State in making a standard policy, and that we must make it as fair and liberal toward the people of this State as a reasonable and fair-minded legislative committee or commission would do. But I can illustrate

The Spirit which Governed the Committee.

I may remind you that up to that time any company could cancel its policy at any moment. There are exceptional cases, such as when a moral hazard has been discovered, where it seems fair

*** There are 2,536 words on the face of the New York standard policy, exclusive of forms and strictly company verbiage.**

to allow a company to cancel forthwith; but the Committee felt it would be unfair to perpetuate against everybody this privilege simply because companies might wish to exercise it in one case in ten thousand. Therefore they provided that the companies might cancel only after five days' notice. Such protection of the interests of the insured had never been in any policy in New York State or any other State, except one.

Another condition in the interest of property owners: All policies contained a clause making it the duty of the insured to move property endangered by fire. In the New York standard policy that condition continues, and is expressed in lines 32, 33, and 34. But the Committee felt that if a man moved his goods at the behest of the insurance companies it ought not to be left to a court and jury to say whether the insurance continued to protect him in the place where he moved his goods; and so we framed an equitable rule, which you will find beginning at line 60, by which it is made clear that the insurance follows the goods when they are removed out of danger of fire in the vicinity. This is the first policy, I think, that ever contained this stipulation.

Another provision solely for the benefit of the public: Every policy contained a more or less stringent clause forbidding alterations or repairs without a special permit endorsed on the policy, for which, generally, a charge was made. I suspect that under a strict construction of this clause most policies were invalidated every year.

If you look at line 15 and the context you will observe a reasonable and generous mechanic's privilege without charge and without the trouble of handing in the policy for endorsement.

Previous to this many policies stipulated that a mortgage on real estate invalidated the policy unless the consent of the company was obtained. The Committee struck that out altogether, but only after strenuous efforts of one member to retain the old provision. The Connecticut companies were especially interested to have it struck out, as there had been a suit in Connecticut against one company which undertook to plead the invalidation of its policy because of a mortgage on a farmhouse in Connecticut, which had been destroyed by fire; and when the gentleman from that one company was arguing the matter before the Committee Mr. Skilton reminded him that the Connecticut companies offered to pay his loss for him, if he would let them, in order to avoid the scandal a lawsuit would create and the hostility certain to be excited in the Legislature.

The topic assigned me does not call for the discussion of

The Conditions of the Policy.

That is unnecessary, for our friend Mr. Richards has lucidly explained them in his book, although some few of his conclusions, like court decisions, leave room for contention. But the historical account would be incomplete if I neglected to tell how some features originated, features dissimilar to those in policies that were displaced by the one I am describing.

First, we adopted the word "insured" instead of the word "assured." And since there is not, perhaps, more than one, and perhaps not even one, American company called a fire assurance company, I regret that the Insurance Exchange has in all its circulars and promulgations used the old and obsolete term of "assured." It is not too late for the Exchange to follow the statute and the standard policy under which all the contracts are made.

Then, in the line numbered 1,—the first line reads: "This company shall not be liable beyond the actual cash value of the property at the time any loss or damage occurs."

Here is a fair notice to people who had an idea, such as the valued-policy folly promulgates, that the value of the property is the amount of the insurance policy. This was put in to correct that misconception.

There are other words, later on in the same clause, referring to the right of the company to substitute articles of "like kind and quality."

Everything was done to tell a property owner plainly that he was insured simply for the actual damage he might suffer by fire, and that the companies on making him good would discharge their full obligation. Mr. Heald expressed himself as considering the option in line 5, "to replace damaged property with other of like kind and quality," the most important right that was preserved to the companies in the entire policy.

In all the printed lines from No. 1 to No. 112 there is no topical caption or heading. Many of the best policies previous to this had topical headings, but Mr. Butler cautioned us regarding the danger of that, lest some one condition that belonged under a heading might appear somewhere else and the insured thus be able to claim that we had misled him. So we left headings out, but numbered the lines to make them easy of reference.

Previous to this, conditions respecting important features of the contract had been scattered throughout the policies. The provisions relative to proceedings after a loss appeared in five places in one of the best policies that we had before us, and indeed appeared in as many places in this policy when the stipulations on that subject were first formulated. The Chairman was therefore authorized and directed to assemble all clauses relative to certain subjects by themselves. And so they are arranged in order, and the provisions relative to proceedings after a loss appear in lines 60 to 107.

Here, again, the purpose of the Committee was to set plainly before the policyholders their rights and also, as well, their duties after a fire. Experienced adjusters for companies do not need these rules and conditions set forth in this place, but a property owner who had suffered from a fire, we felt, had a right to expect that these details of the contract should be expressed in the contract, so that he need not have to go and consult a lawyer about the common law.

The Selection of an Umpire

in appraisals, before this, often set the insured and the companies at loggerheads. The insured, for instance, selected his appraiser, who was satisfactory to the companies, and the companies selected their appraiser, who was satisfactory to the insured. And then one set of companies said, "No, we cannot choose an umpire, except in the event of disagreement by the appraisers. That is in *our* policies." Another set of policies required the selection of the umpire at the outset. So what they call in France an *impasse* occurred. Which side was to waive the conditions of their policies—both sides being forbidden by the terms of their policies to waive anything? We thought it over and decided that it would be better to agree on an umpire before the appraisal began; for wrangles between appraisers sometimes excited such antipathy that the two found it impossible to choose a third—the umpire. We provided against that by the stipulation beginning at line 86.

The statement of the acts and conditions that would void a policy formerly appeared in several places. Here they are all in one place, and that prominent among the first short lines, so that no policyholder could be excused for overlooking it. Such voidable conditions as cannot be waived or consented to by the company are clearly mentioned in lines 7 to 10. Those that may be waived or consented to follow in lines 11 to 30.

There are other stipulations comprised in the printed lines solely for the information and understanding of policyholders.

There are also provisions designed as safeguards against excess of hostile construction by courts. At line 73 it is provided

that the prohibition of other insurance (unless consented to by the company) applies to such other insurance, whether it be valid or not. The stipulation prevents a man from claiming that he had no other insurance if he had done some act to invalidate it.

The expression "whether valid or not" was intended to cover, also, a case in Iowa. A man who had a loss presented his policies, we will say, to five companies. One was found to be insolvent. The man said, "Well, then, you four must divide the loss between you." The four companies said "No, you have been carrying this insurance. That you have paid for. It is not our fault, and we do not propose to pay that company's loss." So they went to court, and the Iowa court decided that the four companies must pay, thus virtually making solvent companies guarantors of the solvency of their co-insurers. So the companies felt it was quite proper that a clause should be inserted in our insurance policy by which the owner, and not the solvent company, should take the consequences of his buying "cheap and nasty" insurance.

At line 36, the provision as to fallen buildings reads: "If a building *or any part thereof* fall, except as the result of fire, all insurance by this policy on such building or its contents shall immediately cease." We knew, of course, that this meant any *important* part of a building. That was rendered necessary by a case in Louisville, Kentucky, where a considerable part of a wholesale warehouse fell, and fire ensued, completing the destruction of the contents; but because the policy conditions read "if a building fall," and because the *whole* building did not fall, the court held the policy had not been invalidated, and the companies had to pay. Most or all policies used to contain a declaration that

THE BROKER WAS AGENT OF THE INSURED.

Now we felt that was unjust. That was a question of fact, and sometimes of law, in each case. Sometimes the agent of the company becomes also the agent of the insured, and *vice versa*. This policy avoids the folly of attempting to settle that question in advance, but by the same rule of reason it undertakes to prevent having agents appointed for the company or foisted upon it without its consent. You will find the stipulation at line 47; "In any matter relating to this insurance no person, unless duly authorized in writing, shall be deemed the agent of this company."

We refrained from any declaration as to who shall be deemed the agent of the insured.

One of the leading adjusters of the present time came to me

a few weeks ago and said he was about to deliver an address on the standard policy. He had adjusted a great many losses under it and thought he understood its conditions—which was not remarkable, since he is a man of at least average intelligence, and I think the conditions are clearly expressed. But there was one thing in the policy that he could not understand, and had never found any one who could explain it to him. He called my attention to the latter part of line 100, which reads: "Liability for reinsurance shall be as specifically agreed hereon."

"WHAT DOES THAT MEAN?"

To understand that one must be familiar with the statute creating this policy, and with all the circumstances. Mr. McMillan, as you know, was determined to secure uniformity in fire insurance contracts in this state. Even after we had secured his consent to amendments that allowed the companies to write in descriptions of property and a few indispensable facts and conditions applicable to specific risks, the bill forbade any clause "inconsistent with or a waiver of" any condition of the standard policy and prohibited "any other or different" rider or condition. Fire reinsurance is substantially fire insurance and is regulated by the same laws, but reinsurance varies enough from direct insurance to require a contract different in some respects from a contract with a property owner. Such a difference might under a strict construction of the statute, be regarded as prohibited. So, to recognize reinsurance and enable it to be carried on under Senator McMillan's law, and in accordance with the conditions of the standard policy with such adaptations as were requisite, this stipulation at line 100 was incorporated in the document.

A similar explanation will account for the provision beginning at line 56 and another provision beginning at line 110. The law said: "No other or different provision, agreement, condition or clause shall in any manner be made a part of said contract or be endorsed thereon *or delivered therewith.*" Under this restriction even a mortgagee clause could not have been used, so the provision beginning at line 56 was inserted. Then the provision beginning at line 110 was inserted to accommodate mutual companies, of which at that time there were several who would have been much hampered in their natural operations without some such stipulation.

I repeat that it was hard work to persuade Senator McMillan of the necessity of some of the amendments we proposed to his bill, but at last he came to see the propriety of an amendment by

which "forms of description and specification, or any schedules of the property covered by any particular policy, and any other matter necessary to clearly express all the facts and conditions of insurance on any particular risk (which facts and conditions shall in no case be inconsistent with or a waiver of any of the provisions or conditions of the standard policy herein provided for) may be written upon, or attached or appended to, any policy issued on property in this State."

Another amendment upon which we agreed was that "provisions required by law to be stated in this policy might be added thereon or attached thereto." This, I recollect, was intended for the convenience of the companies that print the safety fund conditions on their policies, and I do not remember any other explanation.

Six Months' Labor.

Well, we worked over this matter assiduously for six months. Many of us gave up much of our summer holidays. I will say that I have never served on a committee of any business or social organization where the members were more faithful, more punctual, and more conscientious, and I trust I may add more intelligent, in the performance of their tasks. And I shall do my own feelings violence if I fail to mention our very prompt and efficient printer, Mr. L. W. Lawrence, and his foreman, a man whom I knew only as Billy.

These numbered lines, during the deliberations of the policy, extended all the way across a sheet of this size [displaying a policy], with ample space between for notes—like legislative bills, except that this was the size of the paper, and I suppose that during our deliberations we had at least 50 prints made, as conditions were altered, introduced, or eliminated. Then, when we were through and the policy was ready, Mr. Butler drew our attention to a provision of the statute that called not only for a policy, but, and now I use the language of the statute, also "Such provisions, agreements or conditions as may be indorsed thereon or added thereto."

And he advised us that to neglect to perform this duty would work the forfeiture of our right to make and file the policy. So we started in again and labored for another month. We made a co-insurance clause and a percentage co-insurance clause and a lightning clause and a mortgage clause—in all twenty-two clauses. Finally that was done and we reported to the Board. There was a strong effort in the Board to force

into the printed conditions, and we opposed that. We reminded the members that for the task of supplying a policy for the people of this State the Board had been substituted for the Legislature; that the Legislature had the right to assume that the people would not get from us any innovations or conditions that were uncommon and unfamiliar; that while nobody could object to new conditions more liberal to policyholders than had ever been placed in a policy, we were expected to codify and carefully express the conditions to which the people of the State had become accustomed; and to put in a new condition which was revolutionary would be an unwarrantable exercise of the authority the State had vested in the Board and would discredit us all. There was much earnest and sincere debate on both sides, but at last the policy and all the twenty-two clauses were adopted without the slightest change. We realized we were not to make a new policy, especially, but a policy that should produce *uniformity* throughout the State.

The statute required that all policies should conform to the standard as to size, type, and blanks. As one legal adviser at that time said; "Every policy must be a Chinese copy of the standard."

We never contemplated so great a sheet of paper as that [displaying a policy]. We never expected that these numbered lines should be hastily run together in one place. There is a great deal of blank paper here where some of them might as well go, and we expected to take this policy to our excellent printer and also some other printer of renown for taste and ask him to compose a policy in which the type should be large and legible but in which the form and shape should be more convenient for use. By permission of the legislature that might even now be done. But we had expended so much time—especially on those twenty-two riders—that we had no more time to obtain the typographical arrangement we desired.

We assembled at Mr. Butler's office for our last meeting. Members had felt the strain of the prolonged labors; there had been some displays of impatience. Now, however, there was the best of feeling between us all, and we received Mr. Butler's benediction. It was a tribute to the fidelity, the zeal, the conscientiousness of the members, and we felt that it was much like "approbation from Sir Hubert Stanley." I think we all felt we deserved some praise. We had completed a great work, and we had put into it the best of which we were capable.

I shall risk your good opinion—it is the business of insur-

ance men to take risks—when I say that I shall always remember with the deepest satisfaction how our venerated mentor looked in my eye, and said: "I do not know another man who could have carried this through."

It was late in the day proceeding that on which the papers must be filed with the Secretary of State in Albany or the right of the Board to file them would lapse. We were unwilling to trust to the mail, so Mr. Hull sent a special agent of the Howard Insurance Company to Albany, and the Standard Policy was launched.

I asked some of the Hebrew members of the staff in my office today if they had an Old Testament by them, but they hadn't, so I shall have to try to remember a few of the words of King Lemuel's tribute to his mother, which are something like this: "Give her of the fruit of her hands, and let her own works praise her in the gates."

This policy that I hold in my hand is the first copy of the standard policy that was ever printed. I saw it come off the press and took it at that time. It contains the autographs of the members of the committee and our three legal advisers. Every member of the Committee received a copy thus signed.

Now, gentlemen, it is twenty-five minutes past six. If you wish to go home I shall feel that it is quite reasonable, as we have here our venerable young man of 85, (Mr. Alexander, of the Committee), and many of you who board, I am afraid, will lose your dinners if you do not get home on time, and I do not feel disposed to invite all of you to go with me later to dinner at Delmonico's. There is probably fifteen minutes more that I might consume but I shall not feel at all hurt if many of you should retire. It is now twenty-six minutes after six.

Well, gentlemen, as so many of you have remained I will go on a little longer, and as speedily as possible.

Mr. Butler once told me—jestingly—that his summer's work for our Committee was, from a business point of view, the worst thing he had ever done, for the standard policy had nearly put a stop to litigation arising from policy conditions. Of course, it was beyond the power of the New York Board to eradicate litigiousness altogther from human nature,—the legislature hadn't given us the authority—and there have been a few suits; but so far as I know there have been only two subjects concerning which the New York courts have interpreted provisions of this policy contrary to the purpose and understanding of the Committee and the Board. One was in construing the cancellation

clause, which begins at line 51. That received as thorough consideration as any stipulation in the entire policy. European policies are generally not subject to cancellation at all. The practice in America differed, and we felt that we must continue the American practice. A man ought to be able to get rid of his policy, or the company get rid of a disagreeable customer, as easily, at least, as a man can get rid of his wife when they become tired of each other. If property owners are able to cancel at any time there is no hardship to the company in that. Policies had always preserved the same right to the companies. There are several good reasons why companies should be able to cancel. The Committee never questioned the equity or the wisdom of continuing the practice, but, as already stated, we determined to give the insured five days' notice.

How Give Notice?

It was proposed that it should be done—here is the language of one of the clauses suggested: "By registered letter or otherwise," Mr. Butler thought that a poor provision. How prove that a registered letter had been delivered? One member of the Committee pulled out his scrap book and displayed three receipts for notices that had been sent by registered letters to one man. "Do you mean to tell me," exclaimed the committeeman, "that those three policies are not cancelled?" Mr. Butler, like a thorough lawyer, said, "Let me take the book." Then he added, "Each of the three notices is signed in the name of the insured, but they are all in different hand writings." The member of the committee collapsed and the registered letter provision was striken out. We concluded to require the company to give its notice in any way convenient or practicable, leaving the burden on the company of proving that it had actually given notice. Then came

The Question of Return Premium.

The principle that had governed was that if you take a man's insurance away from him, you must put him back in as good position as he was in before he paid you for it. There are lawyers here who can state that better, in different words. You must return or tender him the unearned part of his premium. The committee recognized the equity of that principle, but we were very desirous that the company should be relieved of the necessity of actually paying without getting a receipt or any

acknowledgement. In cases of moral hazard—the very cases that troubled the companies—the insured would decline to receive the return premium and deny on oath that it ever had been tendered to him. So the committee determined that, while the companies should restore to the insured what he was entitled to, the companies should have something to show for it. I think Judge Sawyer drew up the first clause. The clause proposed received very thorough discussion. Finally, Mr. Skilton took it to Hartford. Mr. Chamberlain and Mr. Skilton, after a week's deliberation in Hartford, came back to another meeting of the Committee. I remember very well how Mr. Chamberlain presented the new form of the clause to the committee. Judge Sawyer looked it over and smilingly approved it. Then it was passed around to all present, and at last Mr. Butler examined it very thoroughly, altered a word, and said, "I think that will do," and that is just as it stands in the policy now, beginning at line 51.

Under this method the business went on for many years. Then a talented young lawyer (who has flattered me by his presence here this evening) was able to persuade the Court of Appeals of this State, in the case of Tisdell versus the New Hampshire Fire Insurance Company, 155th New York, page 163, that this clause did not mean what it says, and that when a company wishes to cancel, the return premium must be paid or tendered without the insured's complying with the stipulation that he must return the policy. The honorable judge who wrote the opinion for the majority of the court based his conclusion on a decision of the same court on an earlier policy and a different provision. Now I could not speak disrespectfully of the Justice who made that decision, because I have a profound respect and admiration for him; but when the same question came up in the United States Circuit Court here, in the case of Swarzchild & Sulzberger versus the Phœnix Insurance Company of Hartford, the learned judge decided the other way. (145 Federal Reporter, 653.) The syllabus reads: "It is not essential to the effectiveness of cancellation by the insurer that the unearned premium be returned or tendered before the surrender of the policy," and in rendering his decision Judge Wallace used this language: "The decision of the Court of Appeals of New York holding the contrary in respect to a similar condition is entitled to great consideration, but it is not controlling upon this court; and the view of the minority of the court, expressed in the dissenting opinion, commends itself to me as presenting the better reasoning." In the United States Court of Appeals (124 Federal Reporter, 52),

Judge Wallace's decision was affirmed. The three judges refer to the State Court of Appeals decision in

DEFERENTIAL TERMS OF DISRESPECT.

And concerning this clause in the policy they say: "It is difficult to conceive how language more definite could have been employed to show that the right to claim such unearned premium could only occur after cancellation by the insurer and surrender of the policy by the insured."

This ought to be some time again submitted to the State Court of Appeals.

The other matter in which the courts have held contrary to the purpose and understanding of the Committee and of all underwriters is in the case of Denley versus Glen Falls Insurance Company (184 New York, 107). Line 7 and line 11 read, "This entire policy, unless otherwise provided, etc., shall be void" in certain cases clearly set forth. There were several items in the policy, and it was, as to one item, unquestionable that the insured had voided something—the "entire policy," the Glens Falls people thought, but the court held, as the syllabus expresses it, that "Breach of warranty as to one subject of insurance does not affect the policy as to the other subjects."

I cannot feel that the policy is to blame for a state of mind that could produce such a decision. Still, able and unbiased expounders of this policy appear to have been unaware of the business considerations that led to the adoption of this clause in this form.

The companies at once began issuing the New York standard policy everywhere. Soon other States passed enactments forbidding the use of any other form. Michigan was the next State to establish a standard, after New York. That policy was prepared by a commission consisting of the Superintendent of Insurance, one lawyer, and one Detroit merchant, and when they had their policy completed it was precisely the New York policy, with two slight verbal changes and one change of condition. It was hoped before the policy went into force, since they had so nearly followed the New York model, that they might be persuaded to adopt it altogether. So the Western Union committee came on from Chicago to Detroit and, obedient to a request from the committee of the National Board, I went there to meet them. The State Commission gave us a very courteous, considerate, and patient hearing, and the Superintendent of Insurance, who was an open-minded and fair man, said, after the hearing, "If we had

known the enormous pains taken to make that New York policy, and had heard your explanation of the one clause in which we have differed, I feel sure there would have been no time spent in working up this matter at all, but we would have adopted your policy." They found, however, that a good many companies had printed the new policies as made by the commission, and they felt it would be unfair then to adopt a policy that would require them to print another supply. The Phœnix of Hartford was one of those companies. I telegraphed to our fellow member, Mr. Skilton, who sits here, and he telegraphed back: "The Phœnix would much rather destroy its policies than have a variation from the New York form." But it was too late.

The National Board at its next meeting passed a resolution thanking *its Committee* on Laws and Legislation for the effort!

Superintendent Hendricks, some years later, secured the passage of a bill authorizing the New York Board to make additional clauses for riders, which the developments of time had shown were required, and at the last session Superintendent Hotchkiss, who has greatly honored me by coming to hear this long talk, induced the Legislature to authorize a form of blank for use on the typewriter—which has taken the place, in so many offices, of pencils and pens. That was a very sensible and businesslike provision. There is, however, after the twenty-five years which we celebrate this fall, no change in the contract.

I look back with profound satisfaction that I was privileged to serve in this important matter, and no doubt the other members of the committee have the same feeling as to their own share in the work. I rejoice that I have lived the quarter of a century since, and that you have given me this opportunity of narrating the history of the origin of the Standard Fire Insurance Policy of New York State.

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